

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
BEFORE THE HONORABLE DENNIS MONTALI, JUDGE

In Re:) Case No. 16-30196-DM
CHUAN TANG,) Chapter 7
)
Debtor.) MOTIONS for RELIEF
) from STAY to COMPLETE
) PENDING STATE COURT
) LITIGATION and REQUEST
) for SANCTIONS
)
) April 7, 2016
) Courtroom 17
) San Francisco, California

Appearances:

For the Movants
Francisco Garcia
and Oliver De
Leon-Garcia:
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1 Thursday, April 7, 2016

9:47 o'clock p.m.

2 P R O C E E D I N G S

3 THE COURT: We have two motions on that. We'll take
4 them together.

5 Good morning.

6 MS. SHIRINOVA: Good morning, Your Honor. Svetlana
7 Shirinova appearing for the movant.

8 THE COURT: And we don't have a telephone appearance
9 for Mr. Yan?

10 THE CLERK: No.

11 THE COURT: You heard from Mr. Yan on this?

12 MS. SHIRINOVA: I received an email on April 4. He
13 said: For your motion, for relief stay on April 7, will you
14 stipulate to submitting on the papers. There is no need for the
15 hearing.

16 And I responded that I wouldn't stipulate for – I mean
17 for ruling on the papers.

18 THE COURT: Well, I don't understand why Mr. Yan isn't
19 here. As a procedural matter, Ms. Shirinova, you didn't comply
20 with our Local Rules by serving the debtor. Even though the
21 debtor's represented by counsel, our rules require debtors to be
22 served. I'm not going to deny your motion because of that, I'm
23 just calling it to your attention.

24 Secondly, to the extent that you want sanctions or the
25 case dismissed, those really don't belong in a motion for relief

1 from stay. So you can make a motion for sanctions, if you want,
2 and you can make a motion to dismiss the case if you think
3 there's a basis to do it, but today it's only relief from stay,
4 okay?

5 MS. SHIRINOVA: Thank you, Your Honor, for being so
6 kind and educating me.

7 THE COURT: It's not a problem.

8 MS. SHIRINOVA: This is my very first experience. I
9 hope you can forgive my omissions.

10 THE COURT: Well, I'm not going to comment on that,
11 I'll just say what I'm saying. But here is the problem.

12 First of all, if Mr. Yan were here I would criticize
13 him too because I think – well, first of all, I'm not
14 criticizing you, I'm simply pointing out some defects. And,
15 incidentally, the issue of service on the debtor I can even
16 treat as waived because Mr. Yan didn't raise the question,
17 presumably.

18 But here's the problem that I'm having. You – Mr.
19 Yan, in my view, misstated the law to the court, the superior
20 court. You made the statement in your – in your brief, and the
21 two motions are virtually the same, that the stay applies to
22 other defendants. That's simply not true. And most of the
23 superior court judges know that to be true, and I'm surprised
24 that you bought that.

25 Now I'll grant you, Mr. – and this is where I would

1 fault Mr. Yan. He filed a statement that you provided to me in
2 the superior court that said that the stay applies with regard
3 to all parties. That's an absolutely false statement of the
4 law, and he -

5 MS. SHIRINOVA: You are correct, Your Honor, however,
6 Mr. -

7 THE COURT: What?

8 MS. SHIRINOVA: You are correct.

9 THE COURT: Yeah.

10 MS. SHIRINOVA: But the San Francisco Superior Court
11 stayed the action. And in the second motion for relief, Ms.
12 Oliver Nekis De Leon-Garcia, we have several more defendants -

13 THE COURT: I know, but there's no stay that protects
14 them, so -

15 MS. SHIRINOVA: Well, the court stated.

16 THE COURT: What I'm telling you is Mr. Yan filed a
17 document on February 22nd that told the court that it was
18 stayed.

19 MS. SHIRINOVA: Right.

20 THE COURT: That was a misstatement.

21 MS. SHIRINOVA: Correct.

22 THE COURT: And perhaps the judge bought the argument.

23 MS. SHIRINOVA: Great.

24 THE COURT: And incorrectly. I think it's up to you
25 if you wish to go forward as to other defendants to inform the

1 court that that's simply not the law.

2 MS. SHIRINOVA: See, the problem is that with other
3 defendants we can accomplish nothing. Mr. - debtor, Isaac Tang,
4 he is an indispensable party. We need discovery -

5 THE COURT: He is not - he is not an indispensable
6 party. Indispensable party means there can be no adjudication
7 without him. That's not true. You can call him as a witness,
8 you can depose him, you can take discovery. He is a - he is a
9 percipient witness even if he is the debtor in bankruptcy, so
10 you're simply wrong and being mis- - fooled if you don't think
11 you can cause him to testify.

12 MS. SHIRINOVA: Your Honor, do you -

13 THE COURT: But the problem is I can't grant relief
14 from stay. He's entitled to his discharge unless there is a
15 dischargeability action filed, and there isn't.

16 So this happens constantly. I understand your client
17 was injured, and that's too bad, but Mr. Chuan - or Tang has a
18 right to file bankruptcy. And if the debt is nondischargeable,
19 then he'll have to accept that consequence. But if it is
20 dischargeable, he's entitled to that relief.

21 MS. SHIRINOVA: Your Honor, may I inform the Court of
22 something that is very important?

23 THE COURT: Um-hum.

24 MS. SHIRINOVA: In the second case, Oliver Nekis De
25 Leon-Garcia, there are several more parties, and for them it is

1 important to allocate their liability proportionately and
2 resolve the debt or -

3 THE COURT: What would happen if - what would happen
4 if he were - if the debtor were dead? What would happen if the
5 debtor died instead of filing bankruptcy, you'd still go forward
6 against the other defendants, wouldn't you? And juries - and
7 juries know how to be instructed to allocate damages.

8 MS. SHIRINOVA: Yes, but I wouldn't be delayed in
9 moving forward.

10 THE COURT: But the point is you shouldn't be delayed.
11 What I think you ought to consider doing is dismissing Mr. Tang
12 from the action and inform or call to the superior court's
13 attention that Tang is not protected by the automatic stay.
14 It's that simple.

15 MS. SHIRINOVA: Your Honor, it is very important to
16 inform this Court that the bankruptcy petition is fraudulent,
17 and I have brought evidence of the debtor having substantial
18 real estate. These are public records -

19 THE COURT: Then file - file a motion.

20 Are you here on the Tang matter?

21 MR. POOLER: Yes, Your Honor.

22 THE COURT: Well, you're late. What is your name,
23 sir?

24 MR. POOLER: Samuel Pooler, here for Dennis Yan.

25 THE COURT: Okay. I'm sorry. Say again your name,

1 please.

2 MR. POOLER: Samuel Pooler, Your Honor.

3 THE COURT: Oh, Mr. Pooler, I recognize you now.

4 All right. Well, I just informed – well, Ms.

5 Shirinova had a text from Mr. Yan saying he was submitting this
6 on the papers, so she didn't know you were going to be coming
7 here.

8 All right. So what – are you co-counsel to Mr. Yan –

9 MR. POOLER: I'm –

10 THE COURT: – or just covering for him today?

11 MR. POOLER: – just covering for him today, Your
12 Honor.

13 THE COURT: Okay. Well, he misled the superior court
14 by informing the superior court that the stay in the Tang
15 bankruptcy stays all the other defendants, and it's not true,
16 it's not – that's simply not the law.

17 MR. POOLER: That is correct, Your Honor.

18 THE COURT: Well, but Mr. Yan should be called to task
19 for that.

20 Ms. Shirinova, if Tang – Ms. Tang – Mr. Tang has
21 concealed assets, then I urge you to call to the trustee's
22 attention what you believe to be the facts to see if those
23 assets can be recovered, or there are remedies that you on
24 behalf of your client can assert in the bankruptcy, but that –
25 but not relief from stay.

1 MS. SHIRINOVA: Your Honor, we are about to conclude
2 the trial. We have litigated one of the cases in two years.
3 The California taxpayers have already paid for us litigating it,
4 and we —

5 THE COURT: But why is that? How have they done that?

6 MS. SHIRINOVA: How? We engaged —

7 THE COURT: What do you mean?

8 MS. SHIRINOVA: — the court, the mediation services,
9 the judge. We engaged the —

10 THE COURT: Well, okay. Okay, okay.

11 MS. SHIRINOVA: — presiding judge. And then now we
12 have to relitigate by an adversary action here in the bankruptcy
13 court —

14 THE COURT: That's —

15 MS. SHIRINOVA: — and again the taxpayers have to pay
16 for that. That's totally —

17 THE COURT: But, look, the taxpayers are paying for me
18 to be here too, okay?

19 MS. SHIRINOVA: Right.

20 THE COURT: So let's not have this. This isn't a
21 political rally. The taxpayers are paying for a court system to
22 be available for you, but you don't make the argument that the
23 taxpayers have been wronged here. The taxpayers elected
24 Congress that passed the law that said debtors can discharge
25 their debts in bankruptcy too. So if you have — see, you're

1 mixing things. If you believe the bankruptcy is fraudulent,
2 make a motion to dismiss it. If you believe there are hidden
3 assets, take advantage of several different alternatives under
4 the Bankruptcy Code. Now I can't – I can't tell you what to do.
5 That's not appropriate. But there is a toolbox full of tools
6 for a creditor who believes that there's been some mischief, but
7 one of those tools isn't you get relief from stay. So I'll go
8 back to my question: If Mr. Tang had died rather than filed
9 bankruptcy, you would go forward with the trial, wouldn't you?

10 MS. SHIRINOVA: In one of the cases.

11 THE COURT: Okay. But why –

12 MS. SHIRINOVA: We –

13 THE COURT: – not both of them?

14 MS. SHIRINOVA: The other case, he, similarly, – I
15 need to make a motion, and so far the San Francisco Superior
16 Court is inclined to actually freeze everything. And I don't
17 know why the judges do that. I mean I will make a motion,
18 however, we do need him. And he is one –

19 THE COURT: You need – you need him but you can have
20 him. You can put him in the witness box and ask him questions.
21 The bankruptcy stay doesn't protect him any more than if he were
22 a percipient witness and had no potential liability, or if you
23 were or I was or Mr. Pooler was. Bankruptcy doesn't protect a
24 citizen from doing what they're required to do, which is testify
25 at trials, even when they are but for the bankruptcy an active

1 defendant in the trial.

2 MS. SHIRINOVA: This is a very good idea and we
3 definitely will embark on this road. However, it would be a
4 miscarriage of justice to – for the debtor to hide behind the
5 bankruptcy protection to conceal his fraud. And I want to
6 protect the record by saying two things –

7 THE COURT: Then – then make the record by filing your
8 motion to deny him his discharge for hidden assets and be
9 prepared to prove it or make the record by providing the Chapter
10 7 trustee with hard evidence that there's some assets to
11 collect.

12 MS. SHIRINOVA: I –

13 THE COURT: You make the point in your papers that
14 this is a no-asset case.

15 MS. SHIRINOVA: Correct.

16 THE COURT: So just stop with that for a minute. If
17 it's a no-asset case, then you don't need to liquidate your
18 claim vis-a-vis Mr. Tang, and therefore relief from stay is even
19 less important. If Mr. Tang has hidden assets, turn it into an
20 asset case.

21 MS. SHIRINOVA: All right.

22 THE COURT: So suppose he has hidden meaningful assets
23 and you have evidence that he did, then get the trustee and say
24 to the trustee go after these assets or, alternatively, –

25 MS. SHIRINOVA: Your Honor, –

1 THE COURT: – undertake it to do it on your own.

2 MS. SHIRINOVA: Somehow I am responsible for drafting
3 my motion in such a fashion that it begs a conclusion that it's
4 a no-asset case. That's not what I was trying to say with my
5 motion. What I was –

6 THE COURT: Well, but it's what you said. It's what
7 you said and it's what the notice to creditors said, right?

8 MS. SHIRINOVA: Your Honor, that was an answer not the
9 most – not the best wording. However, –

10 THE COURT: Look, hold it. I'm not here to make you
11 feel bad. The case was noticed out as a no-asset case, wasn't
12 it?

13 Mr. Pooler, do you know?

14 MR. POOLER: That is correct, Your Honor.

15 MS. SHIRINOVA: They have filed it as such, but it is
16 an asset case, Your Honor.

17 THE COURT: Ms. Shirinova, you told me this is your
18 first bankruptcy. It's my one-millionth bankruptcy, so let me
19 tell you something. When a debtor files a bankruptcy, the
20 debtor is supposed to indicate certain things about the – the
21 case. And if the – let's assume the debtor is being straight up
22 and honest and doing everything correctly, if the debtor says
23 it's a no-asset case, the court takes that representation. The
24 trustee makes her or his own investigation. But creditors are
25 told not to file claims. If – if a debtor reports it as an

1 asset case or if the debtor is hiding an asset and somebody
2 alerts the trustee to the possibility of an asset, then the
3 notice goes out to say: Creditors, file your claims. And then
4 you have a much stronger case.

5 MS. SHIRINOVA: Your Honor, we have alerted the
6 trustee as to the existence of at least three real estate
7 belonging to the debtor.

8 THE COURT: Okay.

9 MS. SHIRINOVA: I have brought evidence here to this
10 Court.

11 The second important fact is that the attorney who
12 filed for Chapter 7 bankruptcy is being investigated by the
13 state Bar -

14 THE COURT: I know. I know he is. I have cited him
15 for sanctions several times, but not on this case.

16 MS. SHIRINOVA: Well, that doesn't mean you're not
17 going to have to sign -

18 THE COURT: Ms. Shirinova, what if - what if a lawyer
19 was charged with a crime but not convicted, would that lawyer be
20 allowed to represent his client in court? Isn't there a
21 presumption of innocence?

22 MS. SHIRINOVA: Your Honor, I'm not saying he is not
23 innocent. What I'm saying that if he filed a fraudulent
24 bankruptcy once, he probably did it again. He's just known for
25 doing that -

1 THE COURT: You're - you're pushing -

2 MS. SHIRINOVA: - and this raises suspicion, Your
3 Honor.

4 THE COURT: - you're pushing your luck by arguing that
5 you get relief from stay because the lawyer has a disciplinary
6 matter pending before the state Bar. The question is whether
7 the debtor is entitled to relief. If the debtor stashed assets,
8 I have no sympathy for the debtor, and somebody just needs to
9 prove it. And if the trustee is given the information and
10 doesn't act on it or disregards it, then there may be
11 alternative remedies for you. But, see, you're arguing
12 alternatively in a way that doesn't make good sense.

13 Think about what you've said. You've said there are
14 assets, but you've said the case should be dismissed as a fraud.
15 Well, if the case is dismissed as a fraud, who is going to get
16 those assets for creditors? You see the problem?

17 Now if your client wants to have no bankruptcy and
18 wants to try to pursue assets, that's a choice your client and
19 you can make. But - but you make a motion to dismiss the case
20 for bad faith filing. There are cases of bad faith filing, but
21 I can assure you that hiding assets, the remedy for - yeah -
22 hiding assets is to either collect the assets or have the debtor
23 lose the discharge in bankruptcy or both. The best results for
24 creditors would be collect the assets and punish the debtor for
25 not disclosing them.

1 MS. SHIRINOVA: Your Honor, the problem is that right
2 now the claim is not completed. We don't even know how much he
3 owes to the creditors -

4 THE COURT: I know that.

5 MS. SHIRINOVA: - and we need to finalize that in a
6 state court against -

7 THE COURT: No, you don't. No, you don't if as
8 against this defendant if he gets a discharge and that if Tang's
9 liability - if Tang is eligible for a discharge in bankruptcy
10 and if your client's assertion of a claim is dischargeable, then
11 vis-a-vis this defendant there's no need to liquidate the claim.

12 You talk about wasting taxpayers' money, I'm not going
13 to turn this back on you, but what would be a bigger waste than
14 to go to superior court to liquidate a claim that is of no
15 consequence to anyone? Now if there is insurance or there are
16 other parties, obviously. I'm not making light of the injury
17 your client suffered. And your client should be entitled to
18 some recompense, but not from Tang if Tang's entitled to
19 discharge the debt. That's just the federal law.

20 So I'm not unsympathetic to the situation your client
21 finds himself in. He was injured. You are obviously diligently
22 pursuing his rights. But there are other defendants, in which
23 case I think the superior court needs to be told clearly you're
24 entitled to go against those other defendants and, if not,
25 obviously I can help you here. But I will tell you this,

1 there's an organization called the American Bankruptcy
2 Institute, ABI. ABI has published a book to aid state court
3 judges on what to do about bankruptcy, and it's there in black
4 and white: The automatic stay doesn't protect nondebtors.

5 I personally, personally have sat in a room down at
6 the superior court and talked to maybe 20 superior court judges
7 and explained that principle to them. Now that's not to say
8 that the judge who has this case was there, I don't know who the
9 judge is, I don't need to know, and I'm not here to criticize
10 another judicial officer. I would criticize Mr. Yan if he were
11 here. I'd say: Why in the world are you telling the superior
12 court a misstatement of the law.

13 And, Ms. Shirinova, I wouldn't hesitate to think about
14 seeking sanctions from Mr. Yan in the superior court for
15 misstating federal law. I don't believe I have the authority to
16 sanction a lawyer in this Court for what the lawyer has done in
17 another court if he -

18 MS. SHIRINOVA: All right, Your Honor.

19 THE COURT: Okay.

20 MS. SHIRINOVA: Thank you very much. I will embark on
21 educating the judges in the San Francisco Superior Court as to
22 the rules of bankruptcy, with your blessings I hope. And -

23 THE COURT: Well, let - well, not with my blessing. I
24 mean -

25 MS. SHIRINOVA: Right. And then -

1 THE COURT: – the one thing that I resist is turf wars
2 between courts. I do know from my own long experience superior
3 court judges do not like to cross – get crossed up with federal
4 bankruptcy law. And they rely on lawyers to tell them the law.
5 And maybe – maybe the judge was misinformed or made an error
6 beyond what Mr. Yan said – Mr. Pooler, you haven't said a word.
7 What do you have to say today?

8 MR. POOLER: Your Honor, it seems that you are on the
9 track that we were going to go down anyway, so I pretty much
10 don't have much to say. It's just my – our contention was that
11 it's a no-asset case, first and foremost, and also it's not the
12 sort of case where the courts generally grant the relief from
13 stay, such as with a secured debtor. Or even if it is an
14 unsecured creditor, it's a child support, spousal support, –

15 THE COURT: Sure.

16 MR. POOLER: – or criminal restitution action.

17 THE COURT: Right.

18 Ms. Shirinova, Mr. Tang was the proprietor of this
19 business, right?

20 MS. SHIRINOVA: Yes, Your Honor. Actually just for
21 the record, I am offering to this Court evidence of the debtor
22 owning the real estate. Also I have informed the U.S. Trustee
23 about the debtor having assets. And right now the meeting of
24 the creditors has been rescheduled or continued –

25 THE COURT: Have you informed the case trustee?

1 MS. SHIRINOVA: Yes, I have. I had -

2 THE COURT: But you said - but you said U.S. Trustee.
3 There are two.

4 MS. SHIRINOVA: Okay.

5 THE COURT: Don't mix them up.

6 MS. SHIRINOVA: I informed Barry Milgrom. That's the
7 name of the person whom I informed -

8 THE COURT: He is - he is the case trustee.

9 MS. SHIRINOVA: All right. He is the case trustee.
10 Sorry for my mixed terminology.

11 THE COURT: That's all right. That's all right.

12 MS. SHIRINOVA: This is really new for me. Now I was
13 present at the meeting of the creditor where I raised the issue
14 of the debtor concealing assets. The meeting of the creditors
15 has been continued to April 27, and the debtor has been ordered
16 to bring grant deeds. I have brought those grant deeds and I am
17 offering this evidence to this Court -

18 THE COURT: I don't want them. They're not relevant
19 here. I told you your motion mixes too many things. I'll
20 repeat again what you don't seem to understand.

21 If Mr. Chuan [sic] hid assets, the remedy today is
22 what you're doing, it's to get the trustee, either the U.S.
23 Trustee or the case trustee - and the reason I called to make
24 the distinction is frequently the U.S. Trustee gets the
25 information and passes it onto the case trustee.

1 Mr. Milgrom is a smart lawyer, experienced lawyer,
2 experienced trustee. If he believes that there – that there is
3 a material omission – and the reason I've stressed material is
4 you could own the Taj Mahal and not disclose it, but if the
5 mortgage on the Taj Mahal was more than the value, then it's of
6 no material consequence. So if Mr. Tang – Tang owned Blackacre
7 that was worth a million dollars and it had \$2 million of a
8 mortgage on it, it's – it's of no material consequence.

9 That does not – that does not constitute an
10 endorsement and a blessing to hide assets, but there's nothing,
11 no material consequence. Now flip it around to say if he owned
12 Blackacre worth a million that had a \$500,000 mortgage on it,
13 then he is hiding \$500,000 of value, and Mr. Milgrom knows how
14 to sniff out and act on that. And sometimes trustees take the
15 ball and run with it. Sometimes they have to tell people, such
16 as you and your client, 'There's nothing I can do,' but that's
17 for him to decide.

18 And the reason why I'm not taking this, it's not that
19 I don't care what you've uncovered, it's just that it's not for
20 me to act on today. And so if Mr. Milgrom sues Mr. Tang to
21 declare that the assets belong in the estate or to deny his
22 discharge or to do something, I have to take the evidence then.
23 So taking it from you now wouldn't be appropriate. I'll take it
24 as a representation that you believe there are assets.

25 But, again, I want you to reflect on something I just

1 told you. You make a very powerful argument here that this was
2 a bad faith filing that was done only to stop the bankruptcy and
3 it should be dismissed. And I'll repeat myself, if I were to
4 dismiss the case we'd put Mr. Milgrom out of a job.

5 MS. SHIRINOVA: Your Honor, I'm not asking you to
6 dismiss the case. I need -

7 THE COURT: Yes, you are. You did. You asked in the
8 motion to dismiss and sanction Mr. Yan.

9 MS. SHIRINOVA: Well, Your Honor, my main concern here
10 is I need to finish the business of allocating liabilities in
11 the state court. For that reason I need the debtor. The debtor
12 did make statements that he is going to hide behind the shield
13 of bankruptcy when the workers sue him. He knew what he was
14 doing and -

15 THE COURT: I understand and that might very well be a
16 basis to dismiss his case. But, again, how many times do I have
17 to tell you this, if you get his case dismissed you can't - he
18 can't use the automatic stay to avoid the consequence of the
19 state court, but you lose the forum to collect the assets that
20 he has concealed. Now that's not to say that the California law
21 doesn't give creditors remedies when assets are concealed or
22 transferred in fraud of creditors, but it's a huge burden and a
23 huge expense. And your client - your client, presumably, needs
24 - you know, needs some recovery for - to compensate him for his
25 injuries, and hopefully other defendants can respond. If - and

1 I was about to ask you when I asked you if he was the principal
2 of the business, I was going to ask you –

3 MS. SHIRINOVA: Well, he is hiding it, but he is the
4 principal –

5 THE COURT: – did the business have liability
6 insurance? Does your client have any recourse through any
7 insurance –

8 MS. SHIRINOVA: Your Honor, these are intentional
9 wrongdoings. The liability insurance doesn't cover it –

10 THE COURT: I just – I just – okay. So there's no
11 insurance to cover it.

12 MS. SHIRINOVA: There is insurance, but these are
13 intentional. He deliberately chose not to pay his workers. He
14 employed undocumented aliens –

15 THE COURT: Well, I thought your client's principal
16 case was the injury when he fell through the –

17 MS. SHIRINOVA: For the injury, we have other
18 defendants and they will probably somehow compensate him, my
19 client, but we can't move forward because of the stay.

20 THE COURT: Forget the stay for a minute. I want to
21 understand the underlying claim. The thrust of the suit, I
22 thought, was your client's injury when he fell through the roof.

23 MS. SHIRINOVA: Right, that's one of the cases.

24 THE COURT: Okay. The other case is for payment of
25 wages?

1 MS. SHIRINOVA: Correct.

2 THE COURT: Well, that's probably dischargeable in
3 bankruptcy no matter what.

4 MS. SHIRINOVA: Intentional wrongdoings –

5 THE COURT: No, no. You're missing the point. The
6 bankruptcy law is very clear on the kinds of debts that may be
7 discharged and may not be discharged. Maybe you have an
8 argument there. I'm not here to judge it, but what I'm saying
9 is that unpaid wages is different from injury, so I accept what
10 you're saying, is that if there – I mean I guess what I'm having
11 trouble understanding is Mr. – I'm sorry – De Leon-Garcia –

12 MS. SHIRINOVA: Right.

13 THE COURT: – worked for Champion; is that correct?

14 MS. SHIRINOVA: Correct.

15 THE COURT: And in the course of his work he was told
16 to do something and he fell through the roof at the restaurant
17 and was injured.

18 MS. SHIRINOVA: Correct.

19 THE COURT: The restaurant did or didn't have
20 liability insurance?

21 MS. SHIRINOVA: The restaurant will pay him for his
22 injury, but we can't move forward because the state court judges
23 believe that the automatic stay stops it –

24 THE COURT: You keep – you keep repeating that.

25 MS. SHIRINOVA: Right.

1 THE COURT: And what I'm telling you is that
2 frequently, frequently plaintiffs' lawyers or bankruptcy lawyers
3 for plaintiffs will make a motion asking permission to proceed
4 against the debtor in name only so they can recover exclusively
5 from insurance, but you didn't do that either.

6 MS. SHIRINOVA: No. I thought I would be – I would
7 get it – what I agreed with the defense counsel that I would get
8 a relief and we would move on. Well, –

9 THE COURT: Nobody told me that you agreed with
10 defense counsel as to anything.

11 MS. SHIRINOVA: Well, that has no consequences on your
12 decision or on your ruling process.

13 THE COURT: I'm sorry, but you're simply incorrect.
14 Mr. Pooler is correct that courts, this Court and most
15 bankruptcy courts normally deny relief from stay when it's to
16 permit a plaintiff to continue against a defendant in something
17 that is not domestic support or certain kinds of things. But we
18 also routinely grant relief from stay to permit a plaintiff to
19 recover from insurance proceeds, but you didn't ask for that.

20 What you asked for is that you want to proceed against
21 the debtor. You said you can't proceed against other
22 defendants, well, I'm more than willing to sign an order that
23 says the stay does not protect anyone other than Chuan Tang.

24 MS. SHIRINOVA: That would be great.

25 THE COURT: Okay.

1 MS. SHIRINOVA: We'll prepare such an order.

2 THE COURT: And – and to say that the bankruptcy stay
3 does not prevent Chuan Tang – Chuan Tang from either being
4 deposed or testifying as a witness.

5 Again, Mr. Pooler, you don't doubt either of those –

6 MR. POOLER: No, Your Honor, I –

7 THE COURT: – issue –

8 MR. POOLER: – completely agree with them.

9 THE COURT: So it may well be, Ms. Shirinova, that
10 insofar as the De Leon-Garcia injury claim, you – I will give
11 you an order that says Tang is protected by the stay, it doesn't
12 protect anybody else unless they are in their own bankruptcy,
13 and the Tang stay doesn't prevent him from being a witness; it
14 doesn't even – it doesn't even prevent a court, if you had a
15 bench trial, or a jury, if you had a special verdict, from
16 making factual determinations of what Tang did, but they're not
17 binding on him as a matter of claim preclusion.

18 So, in other words, suppose you had defendants A, B,
19 and C, and defendant A is in bankruptcy. A bench trial could
20 say: A did this, A gave the instructions to go fix the fan, and
21 B did whatever he did and C did whatever he did; and, as a
22 result, the plaintiff was injured, it would not be binding as a
23 matter of – the old term – *res judicata*, – the modern term –
24 claim preclusion against Mr. Chuan Tang because the action can't
25 proceed against him, but you can still find a fact, okay, and –

1 and -

2 MS. SHIRINOVA: Your Honor, thank you. That's a
3 solution that -

4 THE COURT: - and Mr. Tang can be called to testify
5 and ask questions, and, you know, do whatever he has to do.

6 MS. SHIRINOVA: Such a court order would resolve the
7 problem for one of the plaintiffs substantially. And we'll be
8 very happy to prepare an order for your editing and final
9 reduction.

10 THE COURT: Well, it's not - well, okay.

11 Now, -

12 MS. SHIRINOVA: We will be very happy to do that.

13 THE COURT: - Mr. Pooler, should that be served on you
14 or Mr. Yan?

15 MR. POOLER: On Mr. Yan.

16 THE COURT: All right. Well, then - well, but you've
17 got to make sure - I mean you know I'm a little critical of Mr.
18 Yan today for his misstatement of the law, so -

19 MR. POOLER: Serve it on me, Your Honor, and I will
20 make sure that he gets it.

21 THE COURT: Well, serve it on both Mr. Pooler - if you
22 don't have Mr. Pooler's mailing address, get it from him, or his
23 electronic - are you an electronic filer, Ms. Shirinova? Okay,
24 you're not -

25 MS. SHIRINOVA: No, I am not.

1 THE COURT: - electronic either.

2 You're electronic, aren't you?

3 MR. POOLER: Yes.

4 THE COURT: In this case, have you appeared -

5 MR. POOLER: Not in this case, no, Your Honor.

6 THE COURT: Well, if you don't appear in this case it
7 won't get to you, so all right. Serve it on him by mail and
8 serve Mr. Yan.

9 And so the ruling is that the motion is denied, but
10 nothing in the Chuan Tang bankruptcy stays or protects other
11 parties not in bankruptcy -

12 MS. SHIRINOVA: That's a great ruling.

13 THE COURT: And I'm - and I'm not going to say the
14 superior court was wrong. I'm going to say, I'm just going to
15 make a statement about federal bankruptcy law.

16 MS. SHIRINOVA: We're not going to tell him that, Your
17 Honor. I will educate him.

18 THE COURT: You - you'll have to tell him that.

19 MS. SHIRINOVA: Right. That's one of the motions and
20 that does resolve the problem. That's for the first motion for
21 Francisco Guacamaya Garcia in which we settled the case and the
22 debtor had about \$10,000 to pay. And then instead of bringing
23 money in a week, they filed for bankruptcy. We had a trial
24 scheduled and we would like to either proceed with the trial
25 because his wife is a defendant there and we can get a judgment

1 against her as a joint employer.

2 THE COURT: Then – then go – then proceed against him.

3 MS. SHIRINOVA: Then we can have a similar ruling,
4 correct, Your Honor –

5 THE COURT: Well, you – Mr. Yan filed the same notice
6 in that case too, didn't he?

7 MS. SHIRINOVA: Yes, he did.

8 THE COURT: Well, you can have the same ruling. I'm
9 not granting relief, but I will clarify that it doesn't protect
10 anyone else.

11 MS. SHIRINOVA: All right, Your Honor.

12 THE COURT: Now if the wife wants to file bankruptcy,
13 she can. And let me also caution you that if you have spouses,
14 that community property is protected as a matter of bankruptcy
15 law.

16 MS. SHIRINOVA: If they both file?

17 THE COURT: Even if only one of them files. In other
18 words, if you have two spouses in California whose assets are
19 community property – and that's a fact question because they
20 could have separate assets. But suppose we have A and B – I
21 used to say husband and wife, can't say that anymore. Suppose
22 we have two people who are lawfully married and they own
23 property that is community property. That property is subject
24 to administration in the bankruptcy estate as filed –

25 MS. SHIRINOVA: How about his share of the community

1 property?

2 THE COURT: That community property is subject to
3 administration in the spouse's bankruptcy, all of it. Now there
4 are different outcomes: If it's exempt, if there is some money
5 that's exempt, then the trustee doesn't care. But let me –
6 again, let's use a very extreme example to prove the point.

7 Suppose two people who are married own as community
8 property Blackacre and Blackacre is worth a half a million
9 dollars – equity. The spouse who files bankruptcy has put that
10 community property asset into the bankruptcy estate and the
11 nonbankrupt spouse cannot dispose of that community property.
12 It's just where the nature of the property controls the
13 administration of it.

14 So if Mrs. – whoever the other person was, Mr. Tang's
15 spouse, if she was going to pay money, she can't pay it if it
16 was community property. If it was separate property, that's
17 something else again.

18 Do you know anything about this, Mr. Pooler?

19 MR. POOLER: No, Your Honor.

20 THE COURT: Okay. So, again, I –

21 MS. SHIRINOVA: Your Honor, but there is –

22 THE COURT: – can't really say. Look, – look, if your
23 client agreed to a \$10,000 figure and the defendants agreed,
24 then maybe there's a way for them to figure out how to get your
25 client paid. That's fine if they can get – if your client can

1 get paid.

2 MS. SHIRINOVA: Your Honor, there is a reason why the
3 debtor has not put three pieces of real estate into his
4 bankruptcy petition.

5 THE COURT: You're back to the same thing again. You
6 keep circling back. Act on it, take whatever action is
7 appropriate. I encourage you to do that. I am not condoning
8 hiding assets. But you said he was supposed to bring a grant
9 deed; does that mean he transferred the asset?

10 MS. SHIRINOVA: Yes. I have the -

11 THE COURT: Well, if -

12 MS. SHIRINOVA: - grant deed right here.

13 THE COURT: Ms. Shirinova, if he transferred them then
14 he didn't hide them.

15 MS. SHIRINOVA: But he - I have declarations under
16 penalty of perjury. I can bring the workers in here. He was
17 bragging to the workers that that's exactly what he would do not
18 to pay them -

19 THE COURT: Look, I'm going to say this again. If I
20 owned Blackacre last month and I transferred it to my wife as
21 separate property or to my friend - leave the spouse out. Then
22 on the day I filed bankruptcy I'm not hiding it if I don't
23 disclose it because I didn't have it. I have to disclose a
24 transfer I made, but I -

25 MS. SHIRINOVA: The transfer was not disclosed.

1 THE COURT: If the transfer isn't disclosed and the
2 transfer falls within the time it needs to be disclosed, then
3 there are consequences. But what I'm trying to tell you is you
4 can't be faulted for not disclosing an asset that you
5 transferred away. You can be faulted for not disclosing a
6 transfer. But do you see how you're getting the concepts mixed
7 up? You've said three times that he didn't disclose assets, and
8 then finally it comes out that he transferred them. So maybe
9 his fault was not disclosing a transfer of assets.

10 MS. SHIRINOVA: Your Honor, of course I am not very
11 competent in bankruptcy law. At least I honestly admit that -

12 THE COURT: You shouldn't - you shouldn't keep saying
13 that.

14 MS. SHIRINOVA: Well, it is what it is. I have to
15 deal with that. It's very difficult. However, my brief
16 education indicated that if he has community property asset, he
17 needed to put it on the petition, and it's not there.

18 THE COURT: Ms. Shirinova, if he transferred it, - who
19 did he transfer it to?

20 MS. SHIRINOVA: To his wife.

21 THE COURT: As what?

22 MS. SHIRINOVA: As a separate property.

23 THE COURT: Then it's not community. Don't you see?
24 You -

25 MS. SHIRINOVA: They don't have it -

1 THE COURT: You answered your own question. If – if I
2 transferred my community interest to my spouse, then I don't
3 show on my bankruptcy that I have a community interest. I
4 concede to you I should show in another section of the
5 bankruptcy papers that I transferred it. Why? So trustees or
6 creditors can look to see if the transfer was proper. It may be
7 completely improper. And evidence that the debtor was bragging
8 about hiding assets is powerful evidence.

9 Again, you might have a very strong case for the
10 trustee to recover value if there is equity there, and I'll go
11 back to what I said before. If you transfer your interest in a
12 house on which you have no equity, the transfer has no economic
13 consequences. If you transfer value in fraud of your creditors,
14 there are serious consequences because the transferee may have
15 to give it back and the debtor may lose his discharge. That's a
16 double kill. So – so someone who transfers assets to defraud
17 the creditors runs the risk of losing a discharge as a
18 punishment for misconduct and the transferee may have to give it
19 back. But neither will happen if the bankruptcy is dismissed.

20 So, again, I'm not going to lecture you any longer,
21 but if there are assets to collect, equip the person who can
22 collect them, – it sounds like you're making progress there –
23 and if there are consequences to misstatements under penalty of
24 perjury or hiding things, take advantage of what the law says
25 you can do, properly so. But that's not the same as relief from

1 stay.

2 So we've beaten this to death. I'm not going to grant
3 relief from stay in either state court action. I will clarify
4 in both state court actions that Mr. Tang - no defendant, no
5 nondebtors are protected by the stay, and this debtor is not
6 prevented from being called as a witness or being deposed, or
7 otherwise. You just simply can't proceed against him. Got it?

8 MS. SHIRINOVA: Got it. Your Honor, do we have a tape
9 of today's hearing?

10 THE COURT: A what?

11 MS. SHIRINOVA: A tape-recording.

12 THE COURT: You just have to order one.

13 MS. SHIRINOVA: Yes. I will order one. It will help
14 me to prepare -

15 THE COURT: It's not on tape. It's digital. You can
16 pay the Clerk a fee for -

17 MS. SHIRINOVA: Um-hum.

18 THE COURT: - an unofficial transcript.

19 MS. SHIRINOVA: Yes.

20 THE COURT: What's the going CD rate, 25 bucks?

21 THE CLERK: You know, I think it's - I believe so.

22 THE COURT: It's whatever. It's a modest amount of
23 money.

24 MS. SHIRINOVA: Yeah. I would -

25 THE COURT: And - and/or if you want a formal

1 transcript you'll have to pay more money to get a formal written
2 transcript by the court reporter, but -

3 MS. SHIRINOVA: I would like to listen one more time
4 to everything you have said so that it will help me preparing
5 the order -

6 THE COURT: Okay. Well, you can - can you give her
7 the form or tell her what to do to get the form?

8 MS. SHIRINOVA: All right.

9 THE CLERK: That's correct.

10 THE COURT: Okay. Well, Ms. Parada can tell you.
11 After we go off the record, she'll tell you what you need to do.

12 MS. SHIRINOVA: Okay. As I understand, then you are
13 denying both motions today, right?

14 THE COURT: Well, I'm denying them, but I'm agreeing
15 to clarify a point for you on the orders.

16 MS. SHIRINOVA: Right. And then can I bring them
17 again?

18 THE COURT: Well, -

19 MS. SHIRINOVA: Because usually this -

20 THE COURT: - why would you bring them again?

21 MS. SHIRINOVA: If the need appears, I -

22 THE COURT: Look, maybe the last piece of advice I can
23 give you is to think about consulting a bankruptcy specialist to
24 work with you on this or -

25 MS. SHIRINOVA: I did, it's just -

1 THE COURT: Well, -

2 MS. SHIRINOVA: - apparently I haven't - I mean the
3 consultation hasn't encompassed everything that I've learned
4 today.

5 THE COURT: Well, I know, but you're asking me if you
6 can bring another motion. I just denied your motion. What - if
7 there - if there is something that changes, if there is some
8 reason, then maybe you can.

9 MS. SHIRINOVA: All right.

10 THE COURT: But I think if you are unable to engage
11 competent bankruptcy help, then your clients run the risk of
12 something going wrong because this is a very specialized area of
13 the law and time limits are short and the rules are tight. And,
14 you know, it is what it is because Congress said centuries ago
15 honest debtors are entitled to a fresh start.

16 MS. SHIRINOVA: Honest debtors, Your Honor.

17 THE COURT: And dishonest debtors don't get much
18 sympathy, -

19 MS. SHIRINOVA: Right.

20 THE COURT: - but they still get due process and they
21 still get their day in court, and you have to follow the
22 procedures. And they have - there are very tight time limits.
23 I'm going to leave it at that.

24 Okay? So I'll look forward to getting orders in both
25 cases consistent with what I said. You serve it on Mr. -

1 MS. SHIRINOVA: I will.

2 THE COURT: - Mr. Pooler and Mr. Yan.

3 All right. Thank you very much.

4 MS. SHIRINOVA: Thank you.

5 MR. POOLER: And I'd like to apologize, Your Honor. I
6 would like to apologize to both the Court and to counsel for
7 being late. I -

8 THE COURT: Oh, you were 30 seconds late, Mr. Pooler.
9 We won't -

10 MR. POOLER: Okay. Good. Thank you, Your Honor.

11 THE COURT: No apology necessary.

12 MR. POOLER: Okay. Thank you.

13 THE COURT: Thank you.

14 (The hearing was adjourned at 10:25 o'clock a.m.)

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State of California)
) SS.
County of San Joaquin)

I, Susan Palmer, certify that the foregoing is a true and correct transcript, to the best of my ability, of the above pages, of the digital recording provided to me by the United States Bankruptcy Court, Northern District of California, of the proceedings taken on the date and time previously stated in the above matter.

I further certify that I am not a party to nor in any way interested in the outcome of this matter.

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Dated April 25, 2016